

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
IN THE MATTER OF THE INSOLVENCY ACT, 2015
HCCOMMIN/E225/2024

**HASSAN ABDULAH AHMED.....DEBTOR/
APPLICANT**

AND
DIB BANK KENYA
LIMITED.....CREDITOR/RESPONDENT

RULING

Background

1. The Debtor/Applicant moved the Court by a Notice of Motion dated 10th February 2025, brought under Section 17 of the Insolvency Act, 2015 and Regulations 16 and 17 of the Insolvency Regulations, 2016, seeking to set aside a statutory demand dated 16th December 2024 issued by the Creditor/Respondent.
2. The Applicant deponed that he was served with the statutory demand on 22nd January 2025, claiming Kshs. 66,196,137.45, allegedly arising from a Deed of Guarantee

and Indemnity dated 9th July 2020, purportedly issued to secure loan facilities advanced to **Globistic Limited**.

3. The Applicant contended that he never executed the alleged guarantee and was neither a director, shareholder, nor associated with the principal borrower at the material time, rendering the demand defective, baseless, and legally untenable.
4. He further averred that the Respondent had already instituted **NRB HCCOMM Suit No. E919 of 2021 - DIB Bank Kenya Limited v Globistics Limited & Others**, which remains pending, and that the enforceability of the alleged guarantee and the quantum of liability were live issues before that Court.
5. The Applicant asserted that the borrower had raised a valid defence and claims of set-off arising from the Respondent's enforcement of securities, and that the statutory demand was issued oppressively to exert pressure in respect of a disputed debt.
6. He deposed that the debt was secured by, among others, a **specific debenture of Kshs. 61,440,000** over motor vehicles and joint registrations, which securities had not been fully realized. He further maintained that any personal guarantee was capped at **Kshs. 61,440,000**, yet the

demand sought a higher sum, and that the demand was procedurally defective.

7. The Applicant maintained that unless the demand was set aside, the Respondent would commence bankruptcy proceedings, causing irreparable reputational and commercial harm.
8. The Respondent opposed the application through a replying affidavit sworn on **19th March 2025** by **James Karanja**, its Manager, Collections and Special Assets Management.
9. Mr. Karanja deponed that **Globistic Limited** applied for and was granted an asset finance facility through a **letter of offer dated 15th May 2020**, amounting to **Kshs. 61,440,000**, to finance the purchase of eight Mercedes-Benz trucks and eight trailers.
10. The facility was secured by, inter alia:
 - i. Personal guarantees executed by each director, including the Applicant;
 - ii. A specific registered debenture; and
 - iii. Joint registration of the motor vehicles in the names of the Respondent and the borrower.
11. He averred that the Applicant duly executed a **Deed of Guarantee and Indemnity**, stamped and registered on **9th**

July 2020, and that upon default by the borrower, the Respondent lawfully called up the guarantee.

12. The Respondent conceded that while some vehicles were repossessed and sold, recovery of others was frustrated due to alleged unlawful repossession and sale by third parties, giving rise to pending litigation, including **NRB HCCOMM Suit No. E919 of 2021**, which remains unresolved.
13. It was deposed that, as at the date of the statutory demand, the outstanding debt stood at **Kshs. 66,169,137.45**, and that as a secured creditor, the Respondent was entitled to pursue remedies against the guarantor notwithstanding the existence of securities or pending proceedings.
14. In a further affidavit, the Applicant maintained that the statutory demand was unjustified, the debt disputed, and the accounts unreconciled.
15. He averred that upon proclamation and repossession by the Respondent's auctioneers, several vehicles were allegedly irregularly seized and sold by **Quickfill Limited**, without any accounting by the Respondent for their value or proceeds.

16. He contended that upon taking possession, the Respondent assumed control and risk over the assets and could not claim the full facility amount without first rendering a proper account.
17. He further disputed the alleged indebtedness to **Quickfill Limited**, asserting that the relationship was limited to a fuel supply agreement with a capped credit limit.
18. The Applicant also placed reliance on Shariah-compliant Murabaha–Wakala financing principles governing the facility, which require transparency, fairness, and proper accounting prior to claiming any shortfall.

Analysis and Determination

19. Having considered the pleadings, affidavits, and written submissions filed by both parties, the sole issue for determination is **whether the statutory demand dated 16th December 2024 should be set aside.**
20. Regulation 17(6) of the Insolvency Regulations, 2016 sets out the grounds upon which a statutory demand may be set aside, including where:
 - i. The debt is disputed on substantial grounds;

- ii. The debtor has a counterclaim or set-off;
- iii. The creditor holds security whose value equals or exceeds the debt; or
- iv. The demand ought to be set aside on other sufficient grounds.

21. In the present case, the Applicant squarely disputes execution of the guarantee and his association with the borrowing company at the material time. While the Respondent has exhibited a stamped guarantee, the Applicant's denial, coupled with the pending High Court proceedings challenging the principal debt and enforcement of securities, raises substantial triable issues.

22. It is settled law that insolvency proceedings should not be used as a debt-collection mechanism where a bona fide dispute exists. The Court of Appeal in the case of **Universal Hardware Limited v African Safari Club Limited [2013] eKLR**, summarized the position regarding setting aside of a statutory demand and striking out of a petition on account of a disputed debt as follows: -

“The principle as I understand is that a disputed debt on substantial and bona fide grounds cannot be the subject of a winding-up proceedings on account of the company's inability to pay its debts. The case law and scholarly writings are categorical that a creditor's petition should not be

entertained if it is to enforce a debt that is disputed and the company is solvent, otherwise it will be treated as a scandalous and abuse of the process of the court and will be struck out on that basis.”

23. In **Flower City Limited v Polytanks & Containers Kenya Limited [2021] KEHC 34 (KLR)**, the Court held that a genuine dispute, which is not frivolous or vexatious, is sufficient to warrant setting aside a statutory demand.

24. Similarly, in **Re Global Tours and Travels Limited [2001] EA 195**, the court held that: -

“... in entertaining a petition to wind up a company on account of non-payment of debts, the court must be satisfied that the debt is not disputed on substantial grounds and is bona fide. If it is, then the winding up proceedings are not the proper remedy. The substantial dispute must be the kind of dispute that in an ordinary civil case will amount to a bona fide, proper or valid defence and not a mere semblance of a defence. It is not sufficient for a company to merely say for instance that we dispute the debt. The company must go further and demonstrate on reasonable grounds why it is disputing the debt.”

25. It is also undisputed that the facility was secured by multiple motor vehicles, some of which were repossessed and sold,

while others remain the subject of competing claims and pending litigation. The value of the realized and unrealized security, and the true outstanding balance, are therefore matters requiring proper accounting and determination.

26. Moreover, the statutory demand sought an amount exceeding the alleged capped guarantee sum, further reinforcing the existence of uncertainty and dispute as to liability.

27. Taken cumulatively, the Court is satisfied that the Applicant has demonstrated substantial grounds of dispute within the meaning of Regulation 17(6). To permit bankruptcy proceedings in these circumstances would, in the view of the Court, be premature and unjust.

28. Consequently, the Application is merited and is hereby allowed. The Court, therefore, makes the following orders:

- i. The Statutory Demand dated 16th December 2024 is hereby set aside.
- ii. Costs of the application are awarded to the Debtor/Applicant.

29. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 10TH DAY OF APRIL 2026**



HON. MR. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A - Moses

Ms. Kamau..... for the Creditor

N/A for the Debtor..... for the Respondents